

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA
Civ. No. CV-____-____

UNITED STATES OF AMERICA,

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Plaintiff,

*

CIVIL ACTION NO.

v.

*

VIP PROPERTIES, LLC;

*

GEORGE L. AND TONI DUFOUR

LIVING TRUST DATED

*

FEBRUARY 24, 2003;

EDWARD ANDERSON DBA EDRIC

*

ASSOCIATES;

50TH PENN, LLC;

*

DAVID C. BROWN;

HILLSBORO HOMES, LLC;

*

RICHARD O. HANOUSEK;

VICTOR YALOM;

*

BISANZ FAMILY LIMITED

PARTNERSHIP; AND

*

JERSEY COMPANY,

*

Defendants.

* * * * *

CONSENT DECREE

WHEREAS, Plaintiff, the United States of America, on behalf of the United States Department of Housing and Urban Development ("HUD") and the United States Environmental Protection Agency ("EPA"), has filed a complaint alleging that VIP Properties, LLC, George L. and Toni Dufour Living Trust dated February 24, 2003, Edward Anderson dba Edric Associates, 50th Penn, LLC, David C. Brown, Hillsboro Homes, LLC, Richard O. Hanousek, Victor Yalom, Bisanz Family Limited Partnership, and

Jersey Company (collectively known as "Defendants") violated Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 ("Section 1018"), 42 U.S.C. § 4852d; and

WHEREAS, Section 1018 and the implementing regulations, found at 24 C.F.R. Part 35, Subpart A, and 40 C.F.R. Part 745, Subpart F, require, among other things, that the owners and managing agents of residential properties subject to the law make certain disclosures and provide certain records concerning Lead-Based Paint and Lead-Based Paint Hazards to tenants when a new lease is entered into or, if the lease predates the effective date of Section 1018, at the first change to the terms of an existing lease, such as a rent increase; and

WHEREAS, VIP Properties, LLC manages 10 residential properties in Minnesota constructed prior to 1978 containing approximately 292 units that are subject to this Consent Decree; and

WHEREAS, the George L. and Toni Dufour Living Trust dated February 24, 2003 owns 2 residential properties in Minnesota constructed prior to 1978 containing approximately 38 units; and

WHEREAS, Edward Anderson dba Edric Associates owns 1 residential property in Minnesota constructed prior to 1978 containing approximately 21 units; and

WHEREAS, 50th Penn, LLC owns 1 residential property in Minnesota constructed prior to 1978 containing approximately 5 units; and

WHEREAS, David C. Brown owns 1 residential property in Minnesota constructed prior to 1978 containing approximately 24 units; and

WHEREAS, Hillsboro Homes, LLC owns 1 residential property in Minnesota constructed prior to 1978 containing approximately 18 units; and

WHEREAS, Richard O. Hanousek owns 1 residential property in Minnesota constructed prior to 1978 containing approximately 36 units; and

WHEREAS, Victor Yalom owns 1 residential property in Minnesota constructed prior to 1978 containing approximately 10 units; and

WHEREAS, Bisanz Family Limited Partnership owns 1 residential property in Minnesota constructed prior to 1978 containing approximately 48 units; and

WHEREAS, Jersey Company owns 1 residential property in Minnesota constructed prior to 1978 containing approximately 92 units; and

WHEREAS, the United States alleges that the Appropriate Defendants are jointly and severally liable for their own buildings; and

WHEREAS, the United States alleges that Defendants failed to make certain disclosures required by Section 1018 in approximately 10 residential properties in Minnesota; and

WHEREAS, the Appropriate Defendants have had a Lead-Based Paint risk assessment performed in each residential

property in which they have an ownership and/or management interest that is subject to this Consent Decree; and

WHEREAS, the Appropriate Defendants have agreed to abate Lead-Based Paint Hazards identified in their residential properties that are subject to this Consent Decree; and

WHEREAS, the United States alleges it is entitled to seek injunctive relief in a judicial action, including, but not limited to, an order requiring Defendants to comply with Section 1018 prospectively, and an order requiring Defendants to abate Lead-Based Paint; and

WHEREAS, the United States alleges that Defendants are subject to administrative civil penalties by HUD and EPA for violations of Section 1018 of up to \$11,000 per violation; and

WHEREAS, the United States and Defendants agree that settlement of the claims of the United States without further litigation is in the public interest and that entry of this Consent Decree is an appropriate means of resolving this matter; and

WHEREAS, the Parties agree that settlement and entry of this Consent Decree does not constitute admission or acknowledgment of liability or wrongdoing by Defendants, but is intended solely to settle all claims asserted by the United States against Defendants on the terms set forth herein;

NOW, THEREFORE, upon consent and agreement of the United States and Defendants, and the Court having considered the matter and been duly advised,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. § 4852d(b)(2) and has personal jurisdiction over the Defendants. Defendants consent to, and shall not challenge entry of, this Consent Decree and the Court's jurisdiction to enter and enforce this Consent Decree.

2. Venue is proper in this Court pursuant to 42 U.S.C. § 4852d(b)(2) and 28 U.S.C. § 1391(b) and (c) because the lawsuit involves actions that took place, and 10 Subject Properties are located, in the District of Minnesota.

II. PARTIES BOUND

3. This Consent Decree shall apply to and be binding upon the United States and Defendants, and their heirs, successors and assigns.

4. With respect to two Subject Properties - 3112 Minnehaha and Appleton Villa - the Appropriate Defendants shall remain liable to the United States for all the obligations set forth in this Consent Decree regardless of whether Defendant sells or transfers the property. If any Defendant intends to sell or transfer any other property subject to this Consent Decree prior to termination of the Consent Decree, all of the following must occur before the sale or transfer: (a) all risk assessments and hazard abatement work must be completed at the Subject Property as set forth in Section VII; (b) a clearance examination must be passed as set forth in Section VII and the clearance examination report ("Clearance Report") sent to HUD

requesting an expedited approval due to the pending sale or transfer; and (c) HUD must approve the final Clearance Report. HUD shall provide its approval in writing.

III. DEFINITIONS

5. Unless otherwise expressly provided herein, terms used in this Consent Decree, which are defined in the Residential Lead-Based Paint Hazard Reduction Act ("Act"), shall have the meaning given in the Act or in any regulations promulgated pursuant to the Act. Whenever other terms listed below are used in this Consent Decree, the following definitions shall apply:

a. "Clearance Examination" shall mean an activity conducted after Lead-Based Paint hazard abatement activities have been performed to determine that the hazard abatement activities are complete and that no settled dust-lead hazards exist. The clearance process includes a visual assessment and collection and analysis of environmental samples. The appropriate clearance standards shall be the more restrictive of those set by the jurisdiction where the property is located or by Section 403 of the Toxic Substances Control Act ("TSCA") and its implementing regulations, 40 C.F.R. Part 745, Subpart D.

b. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

c. A "force majeure event" shall mean any event beyond the control of Defendants, their contractors, or any entity controlled by Defendants that delays the performance of

any obligation under this Consent Decree despite Defendants' best efforts to fulfill the obligation. "Best efforts" includes anticipating any potential force majeure event and addressing the effects of any such event (a) as it is occurring and (b) after it has occurred, to prevent or minimize any resulting delay to the greatest extent possible. "Force majeure" does not include Defendants' financial inability to perform any obligation under this Consent Decree.

d. "HUD Guidelines" shall mean the edition of the "HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing" in effect on the date the work is conducted pursuant to this Consent Decree.

e. "Interest" shall mean interest pursuant to 28 U.S.C. § 1961.

f. "Lead-Based Paint" shall mean paint or other surface coatings that contain lead equal to or in excess of 1.0 milligram per square centimeter or 0.5 percent by weight.

g. "Lead-Based Paint Free" shall mean housing that has been found to be free of paint or other surface coatings that contain lead equal to or in excess of 1.0 milligram per square centimeter or 0.5 percent by weight.

h. "Lead-Based Paint Hazards" shall mean lead-based paint hazards as that term is defined in 40 CFR § 745.65.

i. "Lead Abatement Supervisor" shall mean any person licensed by the State in which the property is located to perform lead hazard abatement and mitigation, and supervise lead hazard

abatement workers who perform lead hazard abatement and mitigation.

j. "Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral or a lower case letter.

k. "Section" shall mean a portion of this Consent Decree identified by a roman numeral.

l. "Subject Properties" shall mean the properties listed on Appendix A, attached hereto.

m. "United States" shall mean the United States of America on behalf of HUD and EPA.

n. "Appropriate Defendants" means the owner Defendant that owns the property to which the Paragraph applies and VIP Properties, LLC.

IV. COMPLIANCE WITH SECTION 1018

6. Defendants shall comply with all requirements of Section 1018 and its implementing regulations.

7. To the extent not previously accomplished, no later than ten (10) days after entry of this Consent Decree, the owner/manager of the 3112 Minnehaha, Minneapolis, MN Subject Property and VIP Properties, LLC for the remaining Subject Properties shall provide to each tenant in the Subject Properties a lead hazard information pamphlet approved by EPA, as well as a "lead paint disclosure form" which shall include at a minimum the following:

a. Any known information concerning Lead-Based Paint Hazards and/or Lead-Based Paint;

b. Any available records or reports, or summaries thereof, pertaining to Lead-Based Paint Hazards and/or Lead-Based Paint in the Subject Properties; and

c. A Lead Warning Statement containing the specific language set forth in regulations promulgated pursuant to Section 1018; and

d. Signatures and dates of both VIP Properties, LLC and tenant(s) and the signatures and dates of the owner/manager and tenants of the Subject Property located at 3112 Minnehaha, Minneapolis, MN.

8. Within twenty (20) days after entry of this Consent Decree, VIP Properties, LLC and the owner/manager of 3112 Minnehaha, Minneapolis, MN shall provide written notice to HUD and EPA that they have complied with the requirements of Paragraph 7 of this Consent Decree.

V. PAYMENT OF PENALTY

9. Within thirty (30) days after entry of this Consent Decree, Defendants shall pay a civil penalty of \$7,500.00 to the United States as an administrative penalty for alleged violations of Section 1018.

10. Payment of the civil penalty shall be rendered by electronic funds transfer to the United States Department of Justice, in accordance with current procedures, referencing USAO File Number 2002V00519 and the civil action case name and case number of the District of Minnesota. Payment shall be made in accordance with instructions provided to Defendants by the Financial Litigation Unit of the U.S. Attorney's Office for the

District of Minnesota. Any funds received after 5:00 p.m. (CST) shall be credited on the next business day.

11. Notification that payment of the civil penalty has been made, referencing the USAO File Number 2002V00519 and the civil action case name and case number of the District of Minnesota, shall be provided in accordance with the notification provisions of Section XVII.

12. If Defendants fail to make any payment under Paragraph 9, Defendants shall be subject to Stipulated Penalties pursuant to Paragraph 32.a. of this Consent Decree. In addition, Interest shall accrue on any unpaid amounts until the total amount due has been received.

13. Defendants shall not deduct the civil penalty paid to the United States, or any Interest or Stipulated Penalties, paid under this Consent Decree from their federal, state, or local income taxes, and the United States does not in any way release Defendants from any claims arising under Title 26 of the United States Code.

VI. CHILD HEALTH IMPROVEMENT PROJECT

14. Defendants shall implement the following Child Health Improvement Project ("CHIP") designed to reduce incidences of childhood lead poisoning in the metropolitan areas of their housing properties. The CHIP shall consist of window replacement in at least 35 properties, specifically targeting very low income, owner-occupied homes with children under age 6 in the Thomasdale, Rice Street, and Lower East Side of St. Paul. This project will be conducted in coordination with the St. Paul

Health Department, and will also assist families with children that have been diagnosed with lead poisoning. The project shall be completed within two (2) years after the Effective Date of this Agreement. In implementing the CHIP, Defendants shall spend \$50,000.00, the first \$25,000.00 of which must be paid by February 1, 2008 and the second \$25,000.00 of which must be paid by July 1, 2008. The Parties acknowledge and agree that in implementing the CHIP, Defendants will contract with SPARC Window Replacement Program, a non-profit, community development organization located in St. Paul. A detailed plan to implement the CHIP shall be submitted to HUD and EPA by Defendants for review and approval within ninety (90) days of the Effective Date of this Agreement.

15. Defendants are responsible for the satisfactory completion of the CHIP.

16. With regard to the CHIP, Defendants certify that, as of the Effective Date of this Agreement, Defendants are not required to perform or develop the CHIP by any federal, state, or local law or regulation and are not required to perform or develop the CHIP by agreement, grant, or as injunctive relief awarded in any other action in any forum. Defendants also certify they have not already received, are not currently negotiating to receive, and agree that they will not receive, credit in any other Federal or state enforcement action for the CHIP activity.

17. Within ninety (90) days of completing the CHIP, Defendants shall submit a CHIP Completion Report to HUD and EPA.

The CHIP Completion Report shall contain the following information:

- a. A detailed description of the project as implemented;
- b. A description of any problems encountered in completing the project and the solutions thereto;
- c. An itemized list of all project costs;
- d. Certification that the project has been fully implemented pursuant to the provisions of this Agreement; and
- e. A description of the environmental and public health benefits resulting from implementation of the project (with a quantification of the benefits and pollutant reductions, if feasible).

18. HUD and EPA may, in their sole discretion, require information in addition to that described in the preceding Paragraph, in order to determine the adequacy of CHIP completion and Defendants shall provide such information.

19. After receiving the CHIP Completion Report, HUD and EPA shall notify Defendants whether or not Defendants have satisfactorily completed the CHIP.

20. Each submission required under this Section shall be signed by an official with knowledge of the CHIP and shall bear the certification language set forth in Paragraph 54, below.

21. HUD and EPA do not in any way release Defendants from any claims arising under Title 26 of the United States Code with respect to the CHIP.

VII. WORK TO BE PERFORMED

22. This Section shall govern the Lead-Based Paint risk assessments, hazard abatement, and ongoing operations and maintenance ("O&M") work to be performed under this Consent Decree at all Subject Properties.

23. The Appropriate Defendants have provided a copy of the Lead-Based Paint risk assessment report ("Risk Assessment Report") to HUD and EPA for each of the Subject Properties. Two Subject Properties, specifically Rustic Oaks and Camelot Apartments, have tested Lead-Based Paint Free. As a result, no lead-based paint work is required to be performed at those two Subject Properties pursuant to this Consent Decree.

24.a. No later than seventy-five (75) days after the date of entry of this Consent Decree, Defendants shall provide copies to HUD and EPA of a plan for Lead-Based Paint Hazard abatement ("Hazard Abatement Plan") for all Subject Properties where Lead-Based Paint Hazards have been identified. The Hazard Abatement Plan shall be prepared by a certified Lead Abatement Supervisor and shall include: (1) a list of property addresses where hazards will be abated; (2) information about the components receiving hazard abatement; (3) the method of hazard abatement chosen for each type of component; and (4) the names and certification numbers of certified hazard abatement contractors used. The Hazard Abatement Plan shall be prepared to ensure that Lead-Based Paint Hazard abatement activities required by Section VII of this Consent Decree are conducted in accordance with Chapters 12 and/or 13 of the HUD Guidelines.

b. After review of the Hazard Abatement Plan, HUD shall, in writing: (1) approve, in whole or in part, the submission; (2) approve the submission with modifications; or (3) disapprove, in whole or in part, the submission, directing the Defendants to resubmit the document after modification to address HUD's comments. If HUD disapproves of or requires revisions to the Hazard Abatement Plan, in whole or in part, Defendants shall amend and submit to HUD and EPA a revised Hazard Abatement Plan which is responsive to the directions in HUD's comments, within twenty-five (25) days of receiving such comments. The Hazard Abatement Plan must be approved by HUD before any work is performed at the Subject Properties pursuant to this Consent Decree.

c. No later than forty-five (45) days after approval of the Hazard Abatement Plan, Defendants shall submit a plan to HUD and EPA for ongoing operations and maintenance ("O&M Plan") for those properties that are not Lead-Based Paint Free. After review of the O&M Plan, HUD shall, in writing: (1) approve, in whole or in part, the submission; (2) approve the submission with modifications; or (3) disapprove, in whole or in part, the submission, directing the Defendants to resubmit the document after modification to address HUD's comments. If HUD disapproves of or requires revisions to the O&M Plan, in whole or in part, Defendants shall amend and resubmit to HUD a revised O&M Plan which is responsive to the directions in HUD's comments, within twenty-five (25) days of receiving such comments. The O&M Plan

shall be prepared in accordance with Chapters 6 and 17 of the HUD Guidelines.

25. For each Subject Property where Lead-Based Paint Hazards have been identified, the following work shall be performed:

a. Lead-Based Paint Hazards identified in the units, common areas, and exteriors of each Subject Property shall be abated within three (3) years after approval of the Hazard Abatement Plan, except hazard abatement of properties with children six (6) years of age or under or pregnant women shall be completed within six (6) months of approval of the Hazard Abatement Plan. Hazard abatement of the Subject Properties shall be in accordance with the Hazard Abatement Plan and with Chapters 12 and/or 13 of the HUD Guidelines.

b. No later than seventy-five (75) days after the approval of the Hazard Abatement Plan, any bare soil identified on the grounds of each Subject Property shall be covered with a vegetative ground covering, mulch, or other appropriate covering in accordance with Chapter 11 of the HUD Guidelines.

c. Worksite preparation and occupant protection shall be in accordance with Chapter 8 of the HUD Guidelines.

d. Daily and final cleanups shall be in accordance with Chapter 14 of the HUD Guidelines.

e. Clearance Examinations shall be conducted by a certified Lead-Based Paint risk assessor in each building upon completion of final cleanup in accordance with Chapter 15 of the HUD Guidelines, TSCA Section 403, 15 U.S.C. § 2683, and 40 CFR

745.227(e)(8) and (9). Within fifteen (15) days of the receipt of the clearance examination report ("Clearance Report"), the Appropriate Defendants shall submit the Clearance Report to HUD. The Clearance Report shall contain all results of dust samples analyzed at an EPA-accredited laboratory. If the results indicate that the clearance standard is not achieved, the Appropriate Defendants shall repeat the cleaning procedures identified above under Paragraph 25.d., repeat dust clearance sampling within five (5) days after receipt of the failed Clearance Report, and repeat this procedure until the clearance standard has been attained. All additional Clearance Reports shall be submitted as described above.

f. Over the three (3) years, Defendants shall make substantial and reasonable progress on the Lead-Based Paint Hazard abatement agreed to in this Consent Decree and shall detail the progress made in the Annual Report required in Paragraph 31 of this Consent Decree. The Parties agree that substantial and reasonable progress shall mean each Appropriate Defendant must complete at least 1/2 of the total inventory of Subject Property units by the end of the first eighteen (18) months and the remaining 1/2 of the inventory of Subject Property units by the end of the third year.

26. All the requirements of this Section, except the timelines, shall apply where the Appropriate Defendants or any governmental entity are or become aware of a unit where a child with an elevated blood lead level resides or is a regular visitor. The Appropriate Defendants shall perform a Lead-Based

Paint risk assessment and complete all required hazard abatement activity within five (5) months after the Appropriate Defendants are or become aware of a unit where a child with an elevated blood lead level resides or is a regular visitor. The Appropriate Defendants shall also comply with any work required by any other government entity, such as the City, County, or State within the timelines imposed by that entity.

27. Ongoing O&M in all Subject Properties that are not certified Lead-Based Paint Free shall be implemented at the completion of any hazard abatement activity, and shall be in accordance with the O&M Plan, and Chapters 6 and 17 of the HUD Guidelines. During reevaluations, the Appropriate Defendants shall ensure that all abated areas are still intact and the hazard abatement method has not failed. If any hazard abatement has failed, the Appropriate Defendants shall repair the area in accordance with Chapters 12 and/or 13 of the HUD Guidelines and perform a Clearance Examination within forty-five (45) days of discovery. If dust hazards are discovered as part of ongoing reevaluations, the Appropriate Defendants shall address them according to Chapter 11 of the HUD Guidelines.

VIII. QUALIFICATIONS TO CONDUCT LEAD-BASED PAINT WORK

28. All Lead-Based Paint risk assessments, hazard abatement, and other Lead-Based Paint work shall be consistent with the HUD Guidelines and conducted by individuals authorized to perform the work in accordance with the laws of the jurisdiction where the property is located. Persons performing interim controls, visual assessments for O&M, and general

maintenance shall be trained in either HUD's one day "Lead Safe Work Practices" class or the HUD/EPA "Remodeling, Repair, and Painting" class.

29. The Appropriate Defendants shall ensure that Clearance Examinations are not conducted by the same individual and/or same or affiliated business entity conducting the Lead-Based Paint Hazard abatement work that is being evaluated by the Clearance Examination.

30. The Appropriate Defendants shall ensure that Lead-Based Paint risk assessments are not done by the same individual and/or same or affiliated business entity doing Lead-Based Paint Hazard abatement work on the Subject Properties.

IX. REPORTING REQUIREMENTS

31.a. On or before the one (1) year anniversary of the entry of this Consent Decree, and annually thereafter until completion of all Lead-Based Paint Hazard abatement, the Appropriate Defendants shall submit a written Annual Report to HUD and EPA. The Annual Report shall include, at a minimum: (1) a list of the property addresses where Lead-Based Paint risk assessments have been performed; (2) the status of hazard abatement activities, including the type of hazard abatement method chosen and components receiving hazard abatement, and a list of the property addresses where hazard abatement has been completed during that reporting period; (3) the status of ongoing O&M activities in accordance with Paragraph 27; (4) any and all information concerning the cost of the risk assessments and hazard abatement performed; (5) any Clearance Reports that have

not been previously provided to HUD under Paragraph 25.e.; and (6) any State, County or City notices relating to Lead-Based Paint violations at the Subject Properties.

b. Defendants shall ensure contractor compliance with any State, County and/or City requirements for reporting Lead-Based Paint risk assessments and hazard abatement work in accordance with the laws of the jurisdiction where the property is located.

X. STIPULATED PENALTIES

32.a. If Defendants fail to make timely payment of the penalty provided for in Section V, Defendants shall be required to pay as Stipulated Penalties \$400 per day. Stipulated Penalties shall accrue until such time as the original penalty and all accrued Stipulated Penalties are paid.

b. If Defendants fail to implement the CHIP pursuant to the deadlines provided for in Paragraph 17, Defendants shall be required to pay as Stipulated Penalties \$400 per day, except as provided for in Paragraph 34(b) (CHIP Completion Report). Stipulated Penalties shall accrue until such time as the CHIP and all accrued Stipulated Penalties are paid.

33. If the Appropriate Defendants fail to complete the hazard abatement as described in Paragraphs 25 and 26, or to conduct O&M as described in Paragraph 27, the Appropriate Defendants shall pay Stipulated Penalties of \$200 per day per violation per each unit, until the hazard abatement and/or O&M is completed. If any hazard abatement fails because of the Appropriate Defendants' failure to follow the Hazard Abatement

Plan or HUD Guidelines and/or conduct O&M as described in paragraph 27, those properties shall not be considered abated in accordance with this Consent Decree and Stipulated Penalties shall accrue.

34.a. If the Appropriate Defendants fail to submit any information or reports to HUD, as described in Paragraphs 24, 25, and 31 in accordance with the requirements and/or deadlines set forth in this Consent Decree, the Appropriate Defendants shall pay Stipulated Penalties of \$200 per day for each day each such submission is deemed inadequate and/or late.

b. If Defendants fail to submit the CHIP Completion Report to HUD and EPA as required by Paragraph 17, Defendants shall pay Stipulated Penalties of \$200 per day for each day such submission is deemed inadequate and/or late.

35. Payment of Stipulated Penalties shall be made to the United States in the manner set forth in Paragraph 10 of this Consent Decree.

36. Stipulated Penalties shall accrue regardless of whether the United States has notified the Appropriate Defendants of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment or the required activity is due and shall continue to accrue through the date of payment, or until the required activity is performed. However, the United States may, in its unreviewable discretion, waive or reduce the amount of any Stipulated Penalty. Nothing herein shall prevent the United States from seeking other relief that may be available for non-

compliance, nor prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

XI. FORCE MAJEURE

37. The Appropriate Defendants shall provide notice orally or by electronic or facsimile transmission to the Civil Division Chief of the United States Attorney's Office as detailed in Section XVII of this Consent Decree (Notice) as soon as possible, but not later than 72 hours after the time the Appropriate Defendants first knew of, or by the exercise of due diligence, should have known of, a claimed force majeure event. Defendants shall also provide formal, written notice, as provided in Section XVII of this Consent Decree (Notice), within seven (7) days of the time the Appropriate Defendants first knew of, or by the exercise of due diligence, should have known of, the event. The notice shall state the anticipated duration of any delay; its cause(s); the Appropriate Defendants' past and proposed actions to prevent or minimize any delay; a schedule for carrying out those actions; and the Appropriate Defendants' rationale for attributing any delay to a force majeure event. Failure to provide oral and written notice as required by this Paragraph shall preclude the Appropriate Defendants from asserting any claim of force majeure.

38. If the United States agrees that a force majeure event has occurred, the United States may agree to extend the time for the Appropriate Defendants to perform the affected requirements for the time necessary to complete those obligations. An extension of time to perform the obligations

affected by a force majeure event shall not, by itself, extend the time to perform any other obligation. Where the United States agrees to an extension of time, the appropriate modification shall be made pursuant to Section XIX of this Consent Decree (Integration).

39. If the United States does not agree that a force majeure event has occurred, or does not agree to the extension of time sought by the Appropriate Defendants, the United States' position shall be binding, unless the Appropriate Defendants invoke Dispute Resolution under Section XII of this Consent Decree. In any dispute involving force majeure, the Appropriate Defendants bear the burden of proving, by a preponderance of the evidence, that each claimed force majeure event is in fact a force majeure event; that the Appropriate Defendants gave the notice required by Paragraph 37 of this Section; that the force majeure event caused any delay Defendants claim was attributable to that event; and that the Appropriate Defendants exercised best efforts to prevent or minimize any delay caused by the event.

XII. DISPUTE RESOLUTION

40. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce the obligations of the Appropriate Defendants under this Consent Decree that the

Appropriate Defendants have not timely disputed in accordance with this Section.

41. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the Parties. The period for informal negotiations shall not exceed thirty (30) days from the time the dispute arises, unless it is modified by written agreement of the Parties. The dispute shall be considered to have arisen when one Party sends the other Party a written Notice of Dispute.

42. If the Parties are not in agreement at the end of this informal negotiations period, the position of the United States shall be controlling unless the Appropriate Defendants file a petition with the Court for resolution of the dispute within twenty-one (21) days of receipt of the United States' final position. The petition shall set out the nature of the dispute with a proposal for its resolution. The United States shall have twenty-one (21) days to file a response with an alternate proposal for resolution. In any such dispute, the Appropriate Defendants shall have the burden of proving that the United States' proposal is arbitrary and capricious.

43. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect any obligation of the Appropriate Defendants under this Consent Decree not directly in dispute, unless the United States or the Court agrees otherwise. Stipulated Penalties with respect

to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 36. Notwithstanding the stay of payment, Stipulated Penalties shall accrue from the first day of non-compliance with any applicable provision of this Consent Decree. In the event that the Appropriate Defendants do not prevail on the disputed issue, Stipulated Penalties shall be assessed and paid as provided in Paragraph 36.

XIII. RIGHT OF ENTRY

44. HUD, EPA and their representatives, contractors, consultants, and attorneys shall have the right of entry into and upon all Subject Properties owned or controlled by the Appropriate Defendants, at all reasonable times, upon proper presentation of credentials, for the purposes of:

- a. monitoring the progress of activities required by this Consent Decree;
- b. verifying any data or information required to be submitted pursuant to this Consent Decree;
- c. obtaining samples and, upon request, splits of any samples taken by the Appropriate Defendants or their consultants (upon request, the Appropriate Defendants will be provided with splits of all samples taken by the United States); and
- d. otherwise assessing the Appropriate Defendants' compliance with this Consent Decree.

45. This Section in no way limits or affects any right of entry and inspection held by the United States, HUD, EPA, and

any State, County, or City in which the property is located pursuant to applicable federal, state or local laws, regulations, or permits.

XIV. COVENANT NOT TO SUE

46. In consideration of the payments required by this Consent Decree and the work to be performed, and except as otherwise provided in this Consent Decree, the United States covenants not to sue or take administrative or other action against the Appropriate Defendants arising out of violations of Section 1018 at the Subject Properties that occurred on or before the date of lodging of this Consent Decree. This covenant not to sue with respect to the Appropriate Defendants is conditioned upon the complete and satisfactory performance by the Appropriate Defendants of their obligations under this Consent Decree. This covenant not to sue extends only to the Appropriate Defendants and does not extend to any other person or business entity.

XV. PLAINTIFFS' RESERVATIONS OF RIGHTS

47. The covenant not to sue set forth above does not pertain to any matters other than those expressly specified in Paragraph 46. The United States reserves, and this Consent Decree is without prejudice to, all rights against Defendants with respect to all other matters, including but not limited to, the following:

a. claims based on a failure by the Appropriate Defendants to meet a requirement of this Consent Decree;

b. claims based upon violations of Section 1018 that occur after the date of lodging of this Consent Decree;

c. criminal liability; and

d. all claims not barred by Paragraph 46 of this Consent Decree.

XVI. MISCELLANEOUS

48. This Consent Decree in no way affects Defendants' responsibilities to comply with all federal, state, or local laws and regulations.

49. Except as otherwise provided in this Consent Decree, each Party shall bear its own costs and attorneys' fees in this action.

XVII. NOTICES AND SUBMISSIONS

50. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one Party to another, it shall be in writing and directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Party in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of this Consent Decree with respect to the United States and the Appropriate Defendants.

51. All notices and reports shall refer to this Consent Decree and the date of entry of the Consent Decree, and shall cite the case name of United States v. VIP Properties, LLC et al. and the case number.

U.S. Attorney's Office:

Chief, Civil Division
United States Attorney's Office

U.S. Department of Justice
600 United States Courthouse
300 South Fourth Street
Minneapolis, MN 55415
(612) 664-5600 (phone)
(612) 664-5788 (fax)

U.S. Department of Justice:

Chief, Environmental Enforcement Section
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, DC 20044
D.J. Ref. _____

U.S. Department of Housing and Urban Development:

Director, Compliance Assistance and
Enforcement Division
Office of Healthy Homes and Lead Hazard
Control
U.S. Department of Housing and Urban
Development
451 7th Street, SW
Room 8236
Washington, DC 20410

and

John B. Shumway, Deputy Assistant
General Counsel
Office of General Counsel
U.S. Department of Housing and Urban
Development
451 7th Street, SW
Room 9253
Washington, DC 20410

U.S. Environmental Protection Agency:

Anthony Restaino
Chief, Pesticides and Toxics Compliance
Section (LC-8J)
U.S. Environmental Protection Agency
Region 5
77 West Jackson Boulevard
Chicago, IL 60604

Defendants:

VIP Properties, LLC
11300 Minnetonka Mills Road
Minnetonka, MN 55305

52. Any Party may change either the notice recipient or the address for providing notices to it by serving all other Parties with a notice setting forth such new notice recipient or address.

53. Any notice, report, certification, data presentation, or other document submitted by Defendants pursuant to this Consent Decree which discusses, describes, demonstrates, supports any findings, or makes any representation concerning Defendants' compliance or non-compliance with any requirement of this Consent Decree shall be certified by Defendants or a duly authorized representative of Defendants. A person is a "duly authorized representative" only if: (a) the authorization is made in writing; (b) the authorization specifies either an individual or position having responsibility for overall operation of the regulated facility or activity (a duly authorized representative may thus be either a named individual or any individual occupying a named position); and (c) the written authorization is submitted to the United States consistent with this Paragraph.

54. The certification required by Paragraph 53, above, shall be in the following form:

I certify that the information contained in
or accompanying this [type of submission] is true,

accurate and complete. With regard to [the/those identified portion(s)] of this [type of submission] for which I cannot personally verify [its/their] accuracy, I certify under penalty of law that this [type of submission] and all attachments were prepared in accordance with procedures designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, or the immediate supervisor of such persons, the information submitted is, the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

Signature: _____
Name: _____
Title: _____

XVIII. RETENTION OF JURISDICTION

55. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

XIX. INTEGRATION

56. This Consent Decree and its Appendix constitute the final, complete and exclusive agreement and understanding between the Parties with respect to the settlement embodied in this Consent Decree. It may not be enlarged, modified, or altered unless such modifications are made in writing and approved by the Parties and the Court. The Parties acknowledge that there are no representations, agreements or understandings

relating to the settlement other than those expressly contained in this Consent Decree.

XX. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

57. Defendants agree and acknowledge that final approval of this Consent Decree by the United States and entry of this Consent Decree are subject to the requirements of 28 C.F.R. § 50.7, which provides for notice of the lodging of this Consent Decree in the Federal Register, opportunity for public comment for at least thirty (30) days, and consideration of any comments prior to entry of the Consent Decree by the Court. The United States reserves its right to withdraw consent to this Consent Decree based on comments received during the public notice period. Defendants consent to entry of this Consent Decree without further notice to the Court.

58. If for any reason the Court should decline to approve this Consent Decree in the form presented, this Consent Decree is voidable at the discretion of any Party and the terms of the Consent Decree may not be used as evidence in any litigation between the Parties.

XXI. EFFECTIVE DATE

59. The effective date of this Consent Decree shall be the date upon which it is entered by the Court.

XXII. RECORD RETENTION AND PRESERVATION

60. Defendants shall preserve, during the pendency of this Consent Decree and for a minimum of at least twelve (12)

months after its termination, all documents and records in their custody, control or possession and in the custody, control or possession of their employees, agents, assigns, contractors, subcontractors or consultants, which in any manner relate to this Consent Decree or to the performance of work under this Consent Decree. At the end of this twelve (12) month period and at least thirty (30) calendar days before any document or record is destroyed, Defendants shall notify and make available to the United States such documents and records, or shall provide the originals or accurate, true and complete copies of such documents and records to the United States. Defendants shall not destroy any document or record to which the United States has requested access for inspection or copying until the United States has obtained such access or copies or withdrawn its request for such access or copies.

XXIII. SIGNATORIES/SERVICE

61. Each undersigned representative of the United States and Defendants certifies that he or she has reviewed this Consent Decree, and had the opportunity to have this Consent Decree reviewed by counsel, and is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

62. Defendants hereby agree not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified

Defendants in writing that it no longer supports entry of the Consent Decree based on public comments received pursuant to Paragraph 57 above.

63. Defendants agree that the person identified on their behalf under Section XVII is authorized to accept service of process by mail on behalf of Defendants with respect to all matters arising under or relating to this Consent Decree. Defendants hereby agree to accept service by certified mail in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons.

64. Upon approval and entry of this Consent Decree by the Court, the Consent Decree shall constitute a final judgment pursuant to Rules 54 and 58 of the Federal Rule of Civil Procedure.

XXIV. TERMINATION

65. This Consent Decree shall terminate after all of the following have occurred:

a. Defendants have completed all work required by this Consent Decree;

b. Defendants have paid all penalties and interest due under this Consent Decree and no penalties are outstanding or owed to the United States;

c. Defendants have certified compliance with the terms and conditions of this Consent Decree to the United States; and

d. The United States has not disputed Defendants' certification. If the United States disputes Defendants' certification, the Consent Decree shall remain in effect pending resolution of the dispute by the Parties or the Court. If the United States does not contest the certification, the United States shall petition or the Parties shall jointly petition the Court to terminate the Consent Decree.

So entered in accordance with the foregoing this _____ day of _____, 2008.

UNITED STATES DISTRICT COURT JUDGE

United States v. VIP Properties, LLC et al.

THE UNDERSIGNED PARTIES enter into this Consent Decree in the above matter, relating to the sites enumerated in this Consent Decree:

FOR PLAINTIFF, UNITED STATES OF AMERICA:

RONALD J. TENPAS
Assistant Attorney General
Environment and Natural Resources Division

W. BENJAMIN FISHEROW
Deputy Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Date_____

RACHEL K. PAULOSE
United States Attorney

GREGORY G. BROOKER
Attorney Registration No. 166066
Civil Division Chief District of Minnesota
600 United States Courthouse
300 South Fourth Street
Minneapolis, MN 55415
(612) 664-5689

Date_____

United States v. VIP Properties, LLC et al.

FOR UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT:

JOHN P. OPITZ
Associate General Counsel for the
Office of Finance and Regulatory Compliance

Date_____

JOHN B. SHUMWAY
Deputy Assistant General Counsel
for Program Compliance
U.S. Department of Housing and Urban Development
451 Seventh Street, SW
Washington, DC 20410
(202) 708-4184 ext. 5190

Date_____

United States v. VIP Properties, LLC et al.

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

ROBERT A. KAPLAN
Regional Counsel
U.S. Environmental Protection Agency
Region 5
77 West Jackson Boulevard
Chicago, IL 60604

Date_____

MARY T. MCAULIFFE
Associate Regional Counsel
U.S. Environmental Protection Agency
Region 5
77 West Jackson Boulevard
Chicago, IL 60604
(312) 886-6237

Date_____

United States v. VIP Properties, LLC et al.

FOR VIP PROPERTIES, LLC:

Joseph Bisanz, Chief Manager

Date_____

FOR GEORGE L. AND TONI DUFOUR LIVING TRUST DATED FEBRUARY 24,
2003:

Toni A. Dufour, trustee

Date_____

FOR EDWARD ANDERSON DBA EDRIC ASSOCIATES:

Edward Anderson

Date_____

FOR 50TH PENN, LLC:

Scott Weber, Chief Manager

Date_____

FOR DAVID C. BROWN:

David C. Brown

Date_____

FOR HILLSBORO HOMES, LLC:

Daniel P. Goldman, Chief Manager

Date_____

FOR RICHARD O. HANOUSEK:

Richard O. Hanousek

Date _____

FOR VICTOR YALOM:

Victor Yalom

Date _____

FOR BISANZ FAMILY LIMITED PARTNERSHIP:

Joseph Bisanz, General Partner

Date _____

FOR JERSEY COMPANY:

NAME

Date _____

**APPENDIX A (Subject Properties with Street Addresses and State,
Owner, Number of Units, Units with Children, and Construction
Date)**

	Property Name and Address	Owner	No. of Units	No. of Units with Children Under 6	Construction Date
1.	3112 Minnehaha Avenue Minneapolis, MN	George L. and Toni Dufour Living Trust dated February 24, 2003	18	5	1965
2.	Rustic Oaks 1200 2 nd Avenue Fridley, MN	Edward Anderson dba Edric Associates	21	4	1970s
3.	2302 West 50 th Street Minneapolis, MN	50 th Penn, LLC	5	0	1920s
4.	4422-4430 Nicollet Ave. So. Minneapolis, MN	David C. Brown	24	0	Early 1900s
5.	Hillsboro Townhomes 3503 Hillsboro Court No. New Hope, MN	Hillsboro Homes, LLC	18	11	1965
6.	English Apartments 458-470 English St. St. Paul, MN	Richard O. Hanousek	36	9	1960s
7.	Camelot Apartments 7540 Jersey Ave. No. Brooklyn Park, MN	Jersey Company	92	28	1970s
8.	408 Penn Ave. So. Minneapolis, MN	Victor Yalom	10	0	1920s
9.	Highland Terrace 1025-1045 and 1055 Cleveland Ave. So. St. Paul, MN	Bisanz Family Limited Partnership	48	12	1960
10.	Appleton Villa 615 East 16 th Street Minneapolis, MN	George L. and Toni Dufour Living Trust dated February 24, 2003	20	0	1920s

All properties are managed by VIP Properties, LLC.